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INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement

Dated as of December 15, 1970

Between

Manufacturers Hanover Trust Company, Trustee

and

The Chesapeake and Ohio Railway Company

Conditional Sale Agreement dated as of December 15, 1970, by and between MANUFACTURERS HANOVER TRUST COMPANY, a New York corporation, as Trustee under the First and Second Consolidated Mortgages of The Chesapeake and Ohio Railway Company, each dated January 20, 1890, on its Richmond and Alleghany Railway Division (hereinafter called the "Seller"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the "Buyer"),

RECITALS

The Seller has acquired, or has arranged to acquire, title to the new standard gauge railroad rolling stock (hereinafter called the "Equipment") more particularly described in Schedule A annexed hereto and hereby made a part hereof, from The Chessie Corporation, the manufacturer thereof (hereinafter called the "Manufacturer"), and has agreed, and does hereby agree, to sell the same to the Buyer, and the Buyer has agreed, and does hereby agree, to purchase the same from the Seller, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Seller and the Buyer do hereby agree as follows:

1. *Sale.* Subject to the receipt by the Seller of the items specified in clauses (a) to (h), inclusive, of Section 3 hereof, the Seller will sell and deliver the Equipment, or cause the same to be delivered, to the Buyer and the Buyer will purchase the same from the Seller and accept delivery thereof as hereinafter provided and pay therefor as hereinafter set forth.

2. *Delivery and Acceptance.* The Seller, at or about the time when it shall acquire title to the Equipment or any unit or group of units thereof, will deliver the same to, or cause the same to be delivered to, the Buyer on the tracks of the Buyer at the place or places of delivery specified in Schedule A (or at such other place or places, respectively, as the Buyer shall designate in writing to the Seller). All freight charges for the transportation of the Equipment from the plant of the Manufacturer to the place of delivery thereof to the Buyer shall be assumed and paid by the Buyer and the payment thereof shall be secured by this Agreement.

Upon delivery of each unit of Equipment to the Buyer, the Buyer will assume the responsibility and risk of loss with respect thereto. As between the Seller and the Buyer, the Seller shall at no time, whether prior or subsequent to their delivery to the Buyer, be respon-

sible for, or assume any risk of loss with respect to, any units of the Equipment.

The Buyer shall accept each unit of the Equipment upon its delivery at the place designated by the Buyer in accordance with this Section 2, and an authorized representative of the Buyer shall thereupon execute a certificate of acceptance (hereinafter called "Certificate of Acceptance") stating that such unit has been accepted by him on behalf of the Buyer as conforming in all respects to the requirements and provisions of this Agreement and has been duly delivered hereunder and that such unit is marked in accordance with the requirements of Section 5 hereof. Such Certificate of Acceptance shall constitute conclusive evidence that such unit has been duly delivered to the Buyer by the Seller and is acceptable to the Buyer in all details. Any number of units may be included in any such Certificate of Acceptance.

3. *Payment of Purchase Price.* The Buyer shall pay to the Seller the full purchase price of the Equipment which shall be computed as hereinafter set forth. The estimated purchase price of the Equipment, exclusive of freight charges, is set forth in Schedule A. The Buyer shall, upon delivery of units from time to time by the Manufacturer to the Buyer, pay to the Seller or, if the Seller requests, directly to the Manufacturer, all freight charges for the transportation thereof from the plant of the Manufacturer to the point of delivery thereof to the Buyer.

The Buyer shall pay to the Seller the amount of the purchase price, exclusive of such freight charges, of each unit of the Equipment (hereinafter called the "Deferred Purchase Price") in fifteen (15) equal, or substantially equal, annual installments, together with interest, payable semi-annually, on the portion thereof from time to time remaining unpaid at the rate of 8% per annum from the date of payment for such unit by the Seller to the Manufacturer. The first of such annual installments of principal shall become due and be payable on the fifteenth day of December following the delivery of such unit, subsequent installments to become due and be payable on each fifteenth day of December thereafter to and including December 15, 1985. The first of such semi-annual installments of interest shall become due and payable on the fifteenth day of June following the delivery of such unit, subsequent installments to become due and be payable on each fifteenth day of June and December thereafter to and including December 15, 1985.

The estimated purchase price as set forth in Schedule A is based upon recent agreements between the Buyer and the Manufacturer and is subject to adjustment for, among other things, changes in specifications in the Equipment which may be prescribed by the Buyer. If

the estimated purchase price of any unit or units of the Equipment as shown on the Manufacturer's invoice therefor shall have been paid by the Seller to the Manufacturer pursuant to the provisions of this Section 3 and if the full purchase price thereof as finally determined shall be less than said estimated purchase price, the Buyer shall cause the Manufacturer to pay to the Seller a sum of money equal to the difference between the estimated purchase price of such unit or units theretofore paid by the Seller to the Manufacturer and the full purchase price thereof, and in case of the failure of the Manufacturer to make such payment, the Buyer shall itself pay such sum to the Seller reserving, however, all its rights against the Manufacturer to require the Manufacturer to reimburse the Buyer for any such payment or payments. All sums of money so repaid to the Seller shall be retained by the Seller to the extent required in order to assure the Seller that it shall not have paid more than the full purchase price as finally determined of any such unit or units.

Anything herein contained to the contrary notwithstanding, in no event shall the Seller be obligated hereunder to pay to any manufacturer an amount in excess of the final purchase price of the Equipment.

The Buyer on at least three (3) business days' written notice to the Seller may at any time and from time to time make anticipatory payments of installments of the Deferred Purchase Price, such payments to be applied against such installments in the order of their maturity. The Buyer may also at any time upon giving the Seller at least three (3) business days' written notice of its intention so to do, pay the entire principal balance then remaining unpaid on account of this Agreement.

All payments hereunder shall be made at the office of the Seller at 40 Wall Street, in New York, New York 10015, or at such other office of the Seller in New York, New York, as shall be designated by the Seller.

Except as hereinafter more particularly provided, all payments required under this Agreement will be made by the Buyer in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

The Seller covenants and agrees with the Buyer that the Seller will upon delivery to the Buyer, and the acceptance by the Buyer, of each unit or units of the Equipment pay the purchase price of such units (exclusive of freight charges) to the Manufacturer thereof from, and to the extent that Seller then has on hand, proceeds of sale or condemnation of properties released by the Seller from the aforesaid Mortgages dated January 20, 1890 (hereinafter called the "Mortgages") or funds theretofore deposited with the Seller by the

Buyer in anticipation of receipt of such proceeds, provided the Seller shall have first received all the following:

(a) an original counterpart of the purchase order or contract with all amendments thereto, if any, between the Buyer and the Manufacturer pursuant to which the Equipment was ordered by the Buyer from the Manufacturer, together with an assignment by the Buyer to the Seller, in form and substance satisfactory to the Seller, of all the Buyer's right, title and interest in and under such purchase order or contract and in and to all amendments thereto, if any; such assignment to provide that the Buyer shall remain liable to the Manufacturer for all obligations and liabilities of the Buyer to the Manufacturer under such purchase order or contract and any amendment thereto and that the Seller shall in no event by virtue of such assignment assume, or be deemed to have assumed, any such obligations and liabilities of the Buyer to the Manufacturer, except only as provided in this Agreement with respect to the Seller's obligation to pay to the Manufacturer the purchase price of the Equipment;

(b) a bill of sale, in form and substance satisfactory to the Seller, from the Manufacturer to the Seller transferring to the Seller title to the units of the Equipment delivered hereunder, and warranting to the Seller that at the time of delivery to the Buyer, the Manufacturer had legal title to all such units and good and lawful right to sell the same and that the title to all such units transferred to the Seller by such bill of sale was, at the time of delivery of such units to the Buyer, free of all claims, liens and encumbrances of any nature, except only the rights of the Buyer under this Agreement;

(c) the Manufacturer's customary warranty to the Seller and to the Buyer that each such unit has been built in accordance with the applicable specifications and that each such unit is free from defects in material (except as to specialties, if any, incorporated therein which were specified by the Buyer and were not manufactured by the Manufacturer), construction and workmanship under normal use and service;

(d) the Manufacturer's agreement to protect and hold harmless the Seller and the Buyer from any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, imposed upon or accruing against the Seller or against the Buyer, or against either of their respective successors and assigns, because of the use in or about the construction or operation of any of the units of the Equipment of any device, design, article or material infringing, or claimed to infringe, on any patent, except such devices, designs,

articles or materials specified by the Buyer to the extent that the same are not covered by patent rights existing in favor of the Manufacturer which the Manufacturer has the power to extend to third persons;

(e) a Certificate of Acceptance signed by an authorized representative of the Buyer containing the statements required by the provisions of the third paragraph of Section 2 hereof;

(f) a duplicate of the Manufacturer's invoice or invoices covering all such units so accepted, stating the full purchase price thereof if then known, or if not then known, the estimated purchase price thereof;

(g) a certificate executed by the Buyer, stating that the amount of the full purchase price or of the estimated purchase price of such units, as the case may be, is the amount shown on the invoice or invoices therefor hereinabove in subparagraph (f) referred to; and

(h) an opinion of counsel for the Buyer (which may be based to the extent deemed necessary or appropriate upon certificates of an officer or officers of the Buyer, upon resolutions of the Board of Directors of the Buyer, and upon an examination of such documents, records and files of the Buyer and upon such information as officers and officials of the Buyer may in the ordinary course of their duties furnish to such counsel as to any facts which counsel may deem material for the purpose of giving such opinions) to the effect (i) that the Buyer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that this Agreement has been duly authorized, executed and delivered by the Buyer and, assuming due authorization, execution and delivery by the Seller, is a valid and binding instrument in accordance with its terms, (iii) that this Agreement has been duly filed, recorded or deposited with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and with the Registrar General of Canada pursuant to Section 148 of the Railway Act of Canada, and notice of deposit thereof with the Registrar General of Canada has been duly published in accordance with said Section 148, and that no further filing, recording or depositing of this Agreement is necessary in order to perfect or protect Seller's title to such units of Equipment or its rights under this Agreement, (iv) that title to such units of the Equipment is validly vested in the Seller, free of all claims, liens and encumbrances except the rights of the Buyer under this Agreement, and (v) that no approval of the Interstate Commerce Commission or of

any other governmental authority is necessary for the execution and delivery of this Agreement; such opinion may state that it is subject to qualification in respect of the effect of certain laws and judicial decisions upon the remedies provided in Section 15 of this Agreement without materially interfering with the practical realization of the benefits of the security provided by this Agreement and to the qualification that the rights and remedies of the Seller are also subject to any applicable bankruptcy, insolvency or other laws affecting creditors' rights.

4. *Taxes and Liens.* All payments to be made by the Buyer hereunder will be free of expenses to the Seller for collection or other charges and of the amount of any local, State or Federal taxes and of any licenses hereafter levied or imposed directly upon, or measured by, this Agreement and/or upon any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Buyer assumes and agrees to pay in addition to the full purchase price of the Equipment. The Buyer will also pay promptly all taxes and assessments which may be imposed upon the Equipment after delivery to, and acceptance by, the Buyer or for the use thereof or upon the earnings arising therefrom or the operation thereof or upon the Seller by reason of its ownership thereof by any jurisdiction in which the Equipment or any unit thereof is operated by the Buyer and will keep at all times after their delivery to, and acceptance by, the Buyer, all and every part of the Equipment free and clear of all taxes, assessments, liens and encumbrances which might in any way affect the title of the Seller, except the lien of taxes and assessments not due and payable, provided, however, that the Buyer shall not be required to pay or discharge any such taxes, assessments, liens or encumbrances so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not, in the judgment of the Seller, adversely affect the Seller's title in and to the Equipment. If any such expenses, charges, taxes or licenses shall properly and pursuant to lawful requirements have been paid by the Seller, the Buyer shall promptly reimburse the Seller on presentation of invoice, and any sums of money so paid by the Seller shall be secured by and under this Agreement.

5. *Title to and Marking of the Equipment.* The Seller shall and hereby does retain the full legal title to and property in all units of the Equipment until the Buyer shall have made all of the payments and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Buyer notwithstanding the delivery of the Equipment to, and the possession and use thereof by, the Buyer as provided in Section 10 hereof. Any and

all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

The Buyer shall cause the name "Manufacturers Hanover Trust Company, Trustee, Owner" to be plainly marked in stencil on both sides of each unit of the Equipment in letters of not less than one inch in height. The Buyer will not place any unit of the Equipment in operation or exercise any control or dominion over any unit until such unit shall be so plainly marked.

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the Equipment or any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Buyer may cause the Equipment to be lettered "Chesapeake and Ohio Railway", "Chesapeake and Ohio", "C & O" or in some other appropriate manner for convenience of identification of the Buyer's interest therein.

When and only when the Buyer shall have paid the full purchase price of the Equipment, together with any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained shall have been performed by the Buyer, right to the possession of, title to and property in the Equipment, subject, however, to the liens of the Mortgages under which the Seller is Trustee and of such other mortgages, if any, as may also constitute liens thereon, shall pass to and vest in the Buyer without further transfer or action on the part of the Seller except that the Seller will, if requested by the Buyer so to do and at the Buyer's expense, execute and deliver to the Buyer a bill of sale of the Equipment transferring the title thereto and property therein to the Buyer free and clear of all liens and encumbrances created or retained hereby but subject to the liens of said mortgages and will execute for record or for filing in public office such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to the Equipment.

6. *Replacement.* In the event of loss or destruction of or irreparable damage to any unit of the Equipment from any cause whatsoever (hereinafter called a "Casualty Occurrence") until the Deferred Purchase Price shall have been paid in full by the Buyer, the Buyer shall promptly and fully inform the Seller in regard to such loss, destruction or irreparable damage; the Buyer shall at its election either (a) promptly pay to the Seller a sum equal to the then unpaid balance of the Deferred Purchase Price applicable to such unit (in which event all succeeding annual installments of the

Deferred Purchase Price shall be correspondingly reduced), or (b) promptly replace such unit at its own cost with a unit or units of rolling stock of substantially as good material and construction as that lost, destroyed or irreparably damaged and having a cost or fair value (whichever is less) at least equal to the fair value of the unit replaced immediately prior to the time of loss, destruction or irreparable damage. The Buyer will cause any unit so acquired for replacement to be marked as provided in Section 5 hereof. Any and all such replacements of units and of all and any parts of units of the Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and included in the word "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Seller, subject to the provisions hereof. The Buyer will execute and deliver to the Seller, and will file, record and deposit wherever necessary or appropriate, such instrument or instruments as Seller shall reasonably request for the purpose of perfecting the Seller's interest in and title to all such replacement units. All such replacement units shall be guaranteed and warranted in like manner as the original Equipment delivered hereunder, and the manufacturer or seller of such replacement units shall, if other than the Manufacturer, duly consent to the subjection thereof to this Agreement and shall agree to be bound by all the terms and provisions contained herein with respect to such replacements in like manner as the Manufacturer is with respect to the original Equipment delivered hereunder.

7. *Maintenance and Repairs.* The Buyer will, after the delivery and acceptance of each unit of the Equipment, at all times maintain the same in good order and repair at its own expense.

8. *Reports and Inspections.* On or before November 1 in each year, commencing with the year 1971, the Railroad will furnish to the Seller an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Seller may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, such Equipment is marked as required by Article 5 hereof.

The Seller may, but shall be under no obligation to, inspect the Equipment at any reasonable time or times until the total purchase price herein provided has been fully paid by the Buyer.

9. *Compliance With Laws, Rules and Regulations.* Until the total purchase price herein provided for and all other sums of money payable by the Buyer hereunder shall have been fully paid by the Buyer, the Buyer will comply in all respects with all applicable laws of the United States, Canada and of the States in which its operations involving the Equipment may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. In the event that said laws or rules require the alteration of the Equipment, the Buyer will comply therewith at its expense and will maintain the Equipment in proper condition for operation under such laws and rules until the total purchase price herein provided shall have been fully paid by the Buyer; provided, however, that the Buyer may, in good faith, contest in any reasonable manner the application of any such law or rule and of any requirements for the payment of governmental charges which does not, in the judgment of the Seller, affect the Seller's title in and to the Equipment.

10. *Possession and Use.* The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof, in the United States and Canada, in the usual course of its business and in customary interchange of traffic with other railroads, but only upon and subject to all the terms and conditions of this Agreement.

11. *Buyer's Indemnities.* The Buyer will save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims (including without limitation claims for patent infringements) and demands whatsoever, regardless of the cause thereof, arising on account of the Equipment, Seller's title thereto or the use or operation thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Equipment, as provided in Section 5 hereof, or the termination of this Agreement in any manner whatsoever.

12. *Assumption of Liability.* The Buyer will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of, any or all of the Equipment after delivery thereof to, and acceptance by, the Buyer.

13. *Successors to and Assignments by the Buyer.* Nothing contained in this Agreement shall prevent any merger of the Buyer into, or consolidation of the Buyer with, any other corporation and the transfer of all the Buyer's rights under this Agreement and the sale, lease or transfer of possession of the Equipment to such corporation into which the Buyer shall have merged or with which the Buyer may have been consolidated, if, as a condition to any such merger or consolidation, such other corporation (1) shall be organized and existing under the laws of the United States of America or of one or more States thereof and (2) shall expressly assume by written agreement the due and punctual payment of all indebtedness evidenced by this Agreement and the due and punctual performance and observance of all of the obligations, duties and covenants specified in this Agreement to be performed by the Buyer.

Except in the case of the merger or consolidation of the Buyer into or with such other corporation upon the conditions above set forth, the Buyer will not sell, assign, transfer or otherwise dispose of the Equipment or any unit thereof or its rights under this Agreement to any other firm, person or corporation; provided, however, that if the Buyer shall certify to the Seller that any units of the Equipment have become unprofitable or no longer necessary to retain for use in Buyer's railroad operations, all provisions of Section 6 hereof shall apply to such units in the same manner as if they had been destroyed, and, upon Buyer's compliance with such provisions, the Seller shall, at the expense of the Buyer, release such units from the operation of this Agreement.

14. *Defaults.* In the event that any one or more of the following events of default shall occur, to wit:

(a) The Buyer fails to pay in full for more than 10 days after the same shall become due any installment of the Deferred Purchase Price at the time and in the manner hereinbefore contracted to be paid as provided in Section 3 hereof; or

(b) The Buyer fails to pay in full for more than 30 days after the same shall become due any installment of interest at the time and in the manner hereinbefore contracted to be paid as provided in Section 3 hereof; or

(c) The Buyer shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed, other than the covenants referred to in subdivisions (a) and (e) of this Section 14; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, is filed by or against the Buyer and the trus-

tee or trustees appointed in such proceedings for reorganization shall fail to adopt this Agreement within 60 days of the date of his or their appointment, unless such petition is dismissed prior to the expiration of such 60 days; or

(e) Any proceedings are commenced by or against the Buyer for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and the trustee or trustees or receiver or receivers appointed for the Buyer or for its property in connection with such proceedings shall fail to adopt and assume and agree to perform the terms and obligations of this Agreement within 60 days of the date of his or their appointment, unless such proceedings are dismissed prior to the expiration of such 60 days; or

(f) The Buyer transfers or attempts to transfer its interest in or under this Agreement without the consent of the Seller if pursuant to Section 13 hereof such consent be required;

then at any time after the occurrence of any such an event of default, the Seller may, upon written notice to the Buyer and upon compliance with any legal requirements then in force and applicable to such action by the Seller, declare the unpaid balance of the Deferred Purchase Price of the Equipment together with all other charges and expenses the payment of which is secured by this Agreement, immediately due and payable, without further demand, and thereafter the Seller shall be entitled to judgment for the whole amount so due from the Buyer, together with costs and expenses incurred by the Seller, including reasonable attorneys' fees, and to collect said judgment out of any of the Buyer's property.

The Seller may at its election (and, if before sale of all or any of the Equipment under the provisions of Section 15 hereof, all costs and expenses of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, including reasonable attorneys' fees, and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this paragraph as aforesaid, shall have been paid by the Buyer, and all other existing defaults shall have been remedied, or provision therefor satisfactory to the Seller shall have been made, then and in every such case the Seller will) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made. Notwithstanding the provisions of this para-

graph, it is expressly understood and agreed by the Buyer that no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, or impair any rights or remedies consequent thereon.

15. *Remedies.* If the Buyer makes default as hereinabove provided, then at any time thereafter during the continuance of such default the Seller may, without further notice or demand except to the extent necessary in order to comply with any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any units or parts thereof, and/or any replacements thereof and improvements thereto and all present and future attachments thereto and accessories thereof, without liability to return to the Buyer any sums theretofore paid and free from all claims of the Buyer whatsoever, except as hereinafter in this Section 15 expressly provided, and may remove the same from the use and possession of the Buyer and for such purpose may enter upon the premises where the Equipment may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available facilities or means of the Buyer, with or without process of law; and the Buyer shall deliver the Equipment with all replacements, improvements, equipment, attachments and accessories thereto at its own cost at such place or places as the Seller may reasonably designate. It is hereby expressly agreed by the Buyer that performance of this Agreement to deliver the Equipment as hereinbefore provided is of the essence of the Agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Buyer requiring specific performance hereof. It is further expressly agreed by the Buyer that, until the Seller shall have given notice of its election to retain possession of the Equipment or until the sale thereof as hereinafter provided in this Section 15, the Buyer shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Section 4 hereof.

If the Buyer makes default as hereinabove provided, then at any time thereafter during the continuance of such default and after declaring interest, other charges and the unpaid balance of the Deferred Purchase Price immediately due and payable the Seller, without further notice or demand except to the extent necessary in order to comply with any legal requirements (after retaking possession of the Equipment as hereinbefore in this Section 15 provided), may at its election retain the Equipment as its own and make such disposition thereof as the Seller shall deem fit, and in such event all the Buyer's rights in the Equipment will thereupon terminate and all payments made by the Buyer may be retained by the Seller as

compensation for the use of the Equipment by the Buyer; or the Seller, with or without retaking possession thereof, may, at its election, sell the Equipment, or any unit thereof, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Buyer, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Seller in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Seller under the provisions of this Agreement, including taxes and other charges imposed upon the Seller in connection with said Equipment. Written notice of the Seller's election to retain the property for its own use may be given to the Buyer by telegram or registered mail to the Buyer, at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as hereinbefore provided; and if no such notice is given the Seller shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 15.

To the extent permitted by any such legal requirements any sale hereunder may be held or conducted at such places and at such time or times as the Seller may fix, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine in compliance with any such legal requirements, provided that the Buyer shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail to the Buyer. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Buyer to purchase or provide a purchaser within ten (10) days after notice of the proposed sale, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Seller may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Buyer (except to the extent of surplus money received as hereinafter provided in this Section 15), and in payment of such purchase price the Seller shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Seller by the Buyer hereunder.

If, after applying all sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Buyer shall, and it hereby undertakes and promises to, pay the amount of such de-

ficiency to the Seller upon demand, and if the Buyer fails to pay such deficiency the Seller may bring suit therefor and shall be entitled to recover a judgment therefor against the Buyer. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be applied in accordance with the provisions of the aforesaid Mortgages.

The Buyer will pay all reasonable attorneys' fees incurred by the Seller in enforcing its remedies under the terms of this Agreement. In the event that the Seller brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Seller may recover reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

Each and every power or remedy hereby specifically given to the Seller shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default or an acquiescence therein.

In the event of any conflict between applicable provisions of law in effect at the time or times aforesaid and any right, power or remedy hereinbefore in this Section 15 conferred upon the Seller, such provisions of law shall control and any such right, power or remedy shall be ineffective, without modifying the remaining provisions hereof.

The Buyer, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of the Equipment and to sell the same and any other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Seller's rights hereunder, except such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

16. *Prohibition Against Liens.* The Buyer will pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under the Buyer or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the

Seller thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller hereunder.

17. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Buyer to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

18. *Extension Not a Waiver.* Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

19. *Filing and Recording.* The Buyer will cause this Agreement and any supplements hereto to be filed, recorded or deposited wherever required in the United States of America and Canada for the proper protection of the Seller's title to the Equipment and of its rights hereunder; and the Buyer will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record wherever required in the United States of America and Canada any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Buyer will promptly furnish to the Seller certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Buyer with respect thereto, satisfactory to the Seller.

20. *Payment of Expenses.* The Buyer will pay all costs, taxes, charges and expenses incident to the preparation, execution, acknowledgment, filing, registering and recording of this Agreement, of any instrument supplemental hereto or amendatory hereof and of all other documents incident to the transactions contemplated hereby and all other expenses of the Seller, including the reasonable fees and expenses of its counsel.

21. *Warranties and Defenses.* This Agreement is made without representation or warranty, express or implied, on the part of the Seller. The rights of the Seller shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation or obligations of the Manufacturer or any other manufacturer of the Equipment (or any unit or component parts thereof) to the Buyer. Any and all such obligations, however arising, shall be and remain enforceable by the Buyer against, and only against, the Manufacturer, and no breach of any obligation shall affect the responsibility of the Buyer to make the payments required hereunder to the Seller.

22. *Notice.* Any notice hereunder to the Buyer shall be deemed to be properly served if delivered or mailed to the Buyer at 2 North Charles Street, Baltimore, Maryland 21201, or at such other address as may have been furnished in writing to the Seller by the Buyer. Any notice hereunder to the Seller shall be deemed to be properly served if delivered or mailed to the Seller at 40 Wall Street, New York, New York 10015, or at such other address as may have been furnished in writing to the Buyer by the Seller.

23. *Execution of Counterparts.* This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

24. *Section Headings.* All section headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 148 of the Railway Act of Canada.

26. *Reference to Parties.* Each reference herein to the Seller shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Buyer and its successors and assigns.

IN WITNESS WHEREOF, MANUFACTURERS HANOVER TRUST COMPANY, as Trustee as aforesaid, has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers; and THE CHESAPEAKE AND OHIO RAILWAY COMPANY has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers, all as of the day, month and year first above written.

(CORPORATE SEAL)

MANUFACTURERS
HANOVER TRUST
COMPANY, as Trustee

Attest:

By

Assistant Vice President

Assistant Secretary

(CORPORATE SEAL)

THE CHESAPEAKE AND
OHIO RAILWAY COMPANY

Attest:

By

Treasurer

Assistant Secretary

APPROVED AS TO FORM

CC Kimball

GENERAL ATTORNEY

12/23/70

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 29th day of December, 1970, before me personally came
L. C. CRANE to me known, who being by me duly sworn,
did depose and say that he resides at
320 WATCH HILL ROAD, PEEKSKILL, N. Y.

; that he is an Assistant Vice President of MANUFACTURERS
HANOVER TRUST COMPANY, the Corporation described in, and which
executed the above instrument; that he knows the seal of said Cor-
poration; that the seal affixed to said instrument is such corporate
seal; that it was so affixed by order of the Board of Directors of said
Corporation, and that he signed his name thereto by like order.



PETER F. KEARNS
Notary Public, State of New York
No. 41-719325
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF MARYLAND }
CITY OF BALTIMORE } SS.:

On this 31st day of December, 1970, before me personally ap-
peared L. C. ROIG, JR., to me personally known, who, being by me
duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND
OHIO RAILWAY COMPANY, that one of the seals affixed to the fore-
going instrument is the corporate seal of said corporation, that said
instrument was signed and sealed on behalf of said corporation by
authority of its Board of Directors and he acknowledged that the
execution of the foregoing instrument was the free act and deed of
said corporation.



Russell E. Schreiber, Notary Public
My Commission expires July 1, 1974.

SCHEDULE A

No. of Units: 360

Buyer's Identification Nos.: 61600 to 61959, both inclusive

Description: 100-ton hopper cars (portion of Lot 52)

Est. purchase price per unit: \$12,450

Est. aggregate purchase price: \$4,482,000

Manufacturer: The Chessie Corporation

Place of manufacture and delivery: Russell, Kentucky

Est. delivery dates: January 26 to February 17, 1971